

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 27, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

SECRETARY TO THE BOARD: Peggy S. Pelikan

OTHERS PRESENT: Town of Merton Board of Adjustment
Attorney Robyn Schuchardt, Assistant Corporation Counsel
for Waukesha County, BA03:075
Dave and Connie Blehovde, BA05:024, petitioners
Martha and Herman Fillinger, BA05:023, petitioners
Robert and Barbara Russell, BA05:020, petitioners
Larry Elliot, BA05:019, neighbor
Jim Samuels, BA05:010 and BA05:011, petitioner
Martin and Carol Leonard, BA05:022, petitioners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

The Summary of the Meeting of April 13, 2005, was not complete at the time of this meeting; therefore, its approval will be considered at the meeting of May 11, 2005.

NEW BUSINESS:

BA05:010 AL AND CINDY GAGLIANO – Owners, J.G. Samuels, Inc. - Petitioner
(Held in abeyance from March 9, 2005, and from April 13, 2005)

Mr. Tarmann

I make a motion to hold the hearing in abeyance until the meeting of June 8, 2005, to provide the petitioner the opportunity to redesign the proposed residence, bringing it more into conformance with the Ordinance requirements.

The motion was seconded by Mr. Bartholomew and carried unanimously.

BA05:019 THOMAS NOVOTNY

Mr. Bartholomew *I make a motion to approve the request in accordance with the Staff Report and Recommendation.*

Mr. Schmidt seconded the motion and a discussion ensued. Mr. Bartholomew withdrew his motion and Mr. Schmidt withdrew his second. Mr. Bartholomew then made the following motion.

Mr. Bartholomew *I move to approve the request for variances from the road, shore, and floodplain setback, as well as a special exception from the accessory building floor area ratio requirements of the Ordinance with the following modifications to the reasons and conditions set forth in the Staff Report:*

Condition #2 shall read as follows: The proposed garage shall be no larger than 26 ft. in width and 24 ft. in length and shall be a minimum of 10 ft. from the residence.

The following shall be added to the reasons: The approval of this request as conditioned, will allow the petitioner to accommodate a turn-around area on his own property.

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for **approval** of the request for variances from the road, shore, and floodplain setback requirements and **denial** of a special exception from the accessory building floor area ratio requirements of the Ordinance with the following conditions:

1. The existing shed must be removed from the property prior to the expiration date of the Zoning Permit for the proposed garage.
2. The square footage of the proposed garage shall not exceed 3% of the total lot size.
3. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed garage in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. The garage must contain only one story and conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the vertical distance from the lowest point of the exposed structure to the primary horizontal soffit of the uppermost floor, must not exceed 15 ft.
5. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This

is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for variances from the road, shore and floodplain setback requirements, with the recommended conditions, will permit the construction of a new detached garage, while eliminating the non-conforming shed from the property. The existing residence does not have a garage and the location of the proposed garage, while not meeting the required setbacks, maximizes the distance from the shore and floodplain creating the least amount of negative impact on the lake. A garage could not be constructed on the property in a conforming location and the proposed garage will be located further from the shore and floodplain than the existing residence. It should be noted that an approximately 560 sq. ft. detached garage (with the removal of the existing shed) could be constructed on the property without the need for a special exception from the accessory building floor area ratio requirements of the Ordinance. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:020 ROBERT A. RUSSELL

Mr. Schmidt *I move to deny the request in accordance with the Staff Report and Recommendation for the reasons set forth in the Staff Report and Recommendation.*

Mr. Schultz seconded the motion. Mr. Schmidt and Mr. Schultz voted yes. Mr. Ward, Mr. Bartholomew and Mr. Tarmann voted no. The motion was defeated.

A discussion then ensued and Mr. Tarmann made the following motion.

Mr. Tarmann *I move to approve the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance with the following conditions:*

- 1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, if applicable.*

2. *Prior to the issuance of a Zoning Permit, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.*
3. *Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed garage addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
4. *A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.*
5. *If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division Staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*

The reasons for this approval are as follows:

The proposed garage addition conforms with all of the locational requirements of the Ordinance. It does not exceed the total floor area ratio and open space requirements of the Ordinance and would not significantly serve to perpetuate the longevity of the existing non-conforming residence any more than the addition of the initially approved addition of the garage. Therefore, the approval of this request will serve to promote the purpose and intent of the Waukesha County Shoreland and Floodland Protection Ordinance.

The motion was seconded by Mr. Ward. Mr. Tarmann, Mr. Ward, and Mr. Bartholomew voted yes. Mr. Schmidt and Mr. Schultz voted no. The motion was approved.

The staff's recommendation was for **denial**, for the following reasons:

The petitioner was permitted to remodel the existing residence and to construct an attached 706 sq. ft. garage, the cost of which remained under 50% of the fair market value of the structure. Although the permit has expired and the construction has not been completed, the petitioner would be allowed to apply for a new Zoning Permit for the attached garage addition. Furthermore, the petitioner also has an existing detached garage on the property. It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

BA05:023 HERMAN FILLINGER JR.

Mr. Tarmann

I move to approve the request in concept only to replace the existing patio and retaining wall subject to the following conditions:

- 1. The petitioners must submit detailed construction plans of the proposed replacement patio and retaining wall prepared by a registered landscape architect, surveyor, or engineer, to the Planning and Zoning Division staff for review and comments. Subsequently, the plans must be submitted to the Waukesha County Board of Adjustment for their review and approval. The matter may be brought back to the Board under Old Business.*
- 2. The plans shall show what is existing, what is proposed, how the replacement patio and retaining wall will be constructed and stabilized, and what erosion and sediment control measures will be taken.*
- 3. This conceptual approval is for the replacement of the existing patio and retaining wall only. No enlargement of said structures is conceptually approved.*

The reasons for this conceptual approval are as follows:

Due to the proximity of the retaining wall to the entrance to the house, railings may be necessary and the petitioners have indicated that for the retaining wall to support such railings, it would need to be replaced. The vegetation around the retaining wall is stable, and it would not be appropriate to regrade the area. The conceptual approval is for the replacement, with no enlargement, of the existing patio and retaining wall only.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **denial** for the following reasons:

The existing retaining wall is not necessary for erosion control and therefore, the replacement of the wall is not necessary. The wall could be removed and the area vegetated, per Waukesha County Land Conservation's recommendation. Furthermore, the replacement of the patio is not necessary. The petitioners can use their property for a permitted use without the need for the patio. It should be noted that the petitioners may be permitted to replace the existing patio with an alternative material such as crushed granite, under a Minor Grading Permit. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

BA05:024 DAVID C. AND CONSTANCE L. BLEHOVDE

Mr. Schmidt

I move to approve the request for variances from the offset between a principal residence and an accessory building and the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance, as well as a special exception from the accessory building floor area ratio requirements of the Ordinance with the conditions set forth in the Staff Report and Recommendation with the following modifications and for the following reasons:

Condition #1 shall be deleted.

Condition #2 shall read: "The garage shall not exceed 564.2 sq. ft. in size, it shall be located a minimum of 2 ft. from the north property line, with the overhang on the north side of the garage not to exceed 6 inches."

Addition of Condition #7: "The proposed garage shall contain a firewall on the west and south sides of the building per the Building Code."

The reasons for this approval are as follows:

The proposed garage addition may be located as close as 2 ft. from the north lot line without the need for a variance from the offset requirements of the Ordinance. A firewall will be constructed between the residence and the proposed garage. Without the special exception from the accessory building floor area ratio requirement of the Ordinance, the petitioner would only be permitted to construct a 394 sq. ft. detached garage, which is less than a two-car garage. The granting of a special exception will allow the petitioners to construct

a reasonably sized garage on their property. Therefore, the approval of this request, with the recommended conditions, is within the purpose and intent of the Ordinance.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for **denial** of the request for variances from the offset between a principal residence and an accessory building and the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance but **approval** of the request for a special exception from the accessory building floor area ratio requirements of the Ordinance with the following conditions:

1. The garage shall not exceed 550 sq. ft. in size.
2. Prior to the issuance of a Zoning Permit, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the vertical distance from the lowest point of the exposed structure to the primary horizontal soffit of the uppermost floor, must not exceed 15 ft.
5. The existing shed on the property shall be removed prior to the expiration date of the Zoning Permit for the new garage.
6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

There are no physical limitations on the property that would prevent the owner from constructing a new detached garage in a conforming location. It should be noted that a new detached garage could be constructed as close as the existing detached garage on the adjacent property to the north from the north property line, and 10 ft. from the residence. Therefore, it

has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Without the special exception from the accessory building floor area ratio requirements of the Ordinance, the petitioner would only be permitted to construct a 394 sq. ft. detached garage, which is less than a two-car garage. The granting of the special exception will allow the petitioners to construct a reasonably sized garage in a conforming location. Therefore, the approval of this request, with the recommended conditions, is within the purpose and intent of the Ordinance.

BA05:021 JOE AND PAM DEROSA

Mr. Bartholomew *I move to deny this request in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons set forth in the Staff Report*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for **denial** for the follow reasons:

There is an existing 600 sq. ft. attached garage on the property, which is in a conforming location. The existing detached garage, which the petitioners are proposing to remodel, is less than 1 ft. from the east property line, which does not allow for a reasonable amount of area for the owner of the property to do routine maintenance to the structure. It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

BA05:022 MARTIN AND CAROL LEONARD

Mr. Schultz *I move to deny the request for variances from the shore and floodplain setback, and offset requirements of the Ordinance for the retaining walls and patio per the staff recommendation, and approve the request for a variance from the shore setback requirements of the Ordinance to allow the petitioner to construct a stairway to the lake for the reasons set forth in the Staff Report and with the following conditions:*

1. *The stairway to the lake shall not exceed 4 ft. in width and shall follow the alignment of the existing stairway.*
2. *The new stairway shall be made of wood or a similar product so as to minimize the disturbance of the slope on the property.*

The reasons for the approval are as follows:

The approval of the request for a variance from the shore setback requirements will allow the petitioner to construct a new wooden staircase, in the same location as the existing staircase which may be easier to navigate while not disturbing the very steep slope on the property and not requiring any additional tree removal.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **denial** for the following reasons:

The patio around the fire pit area and the associated retaining wall are not necessary. The retaining wall would not be required without the patio and the petitioners can use their property for a permitted use without the patio and fire pit area. The property currently contains a 2 ft. wide stairway to the lake, which appears to be in stable condition. Per the Waukesha County Shoreland and Floodland Protection Ordinance, the petitioners may be permitted to widen the existing stairway to 3 ft. The only reason that the proposed retaining walls associated with the new stairway would be needed is to accommodate a flat, landing type area approximately half way down the steep slope. The walls are not necessary to abate a known erosion control problem. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:011 URBAN AND GAIL WEBER – Owners **J.G. Samuels, Inc. – Petitioner/Builder**

Mr. Ward

I move to deny the request to modify the decision of March 9, 2005, to permit the construction of a new residence, rather than removing the roof and interior walls of the existing residence and constructing a new two-story home on the existing footprint, as was originally proposed. The new proposal does not conform with the previous decision and requires an open space variance, which was not included in the "Notice of Public Hearing" for the original request. On the advice of Corporation Counsel, it has been determined that it

is not appropriate to reconsider the revised proposal under “old business”. The petitioners are encouraged to submit a new petition requesting the variances from the floor area ratio and open space requirements that are needed for the revised proposal.

The motion was seconded by Mr. Schmidt and carried unanimously.

CLOSED SESSION

Mr. Bartholomew *I move we convene in closed session pursuant to Section 19.85 (1), (g), Wisconsin Statutes, to confer with Attorney Robyn Schuchardt of the Corporation Counsel’s office to discuss pending litigation, James and Gail Mathes vs. Waukesha County Board of Adjustment, Circuit Court Case 03 CV 1007, Court of Appeals Case 2005AP347, regarding BA03:075.*

The motion was seconded by Mr. Ward. A roll call vote was taken and the motion carried unanimously.

OPEN SESSION

Mr. Bartholomew *I make a motion to re-convene in open session.*

The motion was seconded by Mr. Tarmann and carried unanimously.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 10:25 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment